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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re SEAN V., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN V.,

Defendant and Appellant.

C069196

(Super. Ct. No.
SC RD JDSQ102873201002)

The minor, Sean V., appeals from an order of the Shasta County Juvenile Court dismissing his informal probation and purporting to convert a \$25,874 victim restitution order into a civil judgment. The Attorney General commendably observes, and the minor agrees, the order converting the award to a civil judgment is unauthorized by statute and must be reversed. We shall remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND¹

In August 2010, the then 14-year-old minor physically attacked the victim, a fellow student at his high school. The minor pushed the victim face-first into his locker. The victim fell to the ground, and the minor struck him several times on the face and head. The victim suffered serious injuries and was transported to a hospital.

In December 2010, a petition was filed alleging that the minor came within the provisions of Welfare and Institutions Code section 602 in that he committed misdemeanor battery. (Pen. Code, § 242.) The petition included a notice that the minor's parents may be responsible for any restitution owed to the victim.

At an initial hearing in January 2011, the juvenile court found that the minor was eligible for informal probation. (§ 654.2.) The minor's stepmother was present at the hearing. The court advised the minor and the stepmother of the contents of the petition.

The probation department filed a motion to place the minor on informal probation and to reserve the issue of restitution to the victim. The motion included the condition that the minor "pay restitution to the victim . . . in an amount to be determined, jointly and severally with his parents; and the

¹ Because the minor was placed on Welfare and Institutions Code section 654.2 probation, our statement of facts is taken from the probation department's report. Further undesignated statutory references are to the Welfare and Institutions Code.

Court reserve jurisdiction for future restitution to be determined by the Probation Officer and on a payment schedule to be determined by Court Collections.” The motion recommended that the orders of victim restitution, the state restitution fine, and any other ordered fines or fees remain in effect until paid in full pursuant to sections 730.6 and 730.7, and not be discharged upon termination of probation or deferred entry of judgment.

In February 2011, the juvenile court granted the minor informal probation pursuant to section 654.2. Orally and in writing, the court ordered the minor with his parents to pay restitution. As probation had recommended, the court specified that this order was to remain in effect until restitution was paid in full. A restitution hearing was set for April 2011.

In April 2011, the juvenile court held a restitution hearing. The court originally ordered restitution to the victim in the amount of \$100 (for his medical copayment) and to the victim’s medical insurer in the amount of \$25,874. At the suggestion of the prosecutor, the court then ordered that all restitution be paid to the victim and none to the insurer.

Four months later, in August 2011, the juvenile court terminated the minor’s probation. The probation officer noted that the minor had submitted \$100 toward his restitution. The minor objected to payment of the remaining \$25,874 on the ground he was a student and had no ability to pay that amount. After finding that the minor had successfully completed his informal

probation, the court ordered probation terminated and ordered the petition dismissed. Pursuant to sections 730.6 and 730.7, the court ordered "the balance of restitution, if any, converted into a civil judgment."

DISCUSSION

In his opening brief, the minor contended (1) the juvenile court erred when it failed to conduct a hearing on his parents' ability to pay victim restitution, and (2) his counsel's failure to request such a hearing constituted ineffective assistance.

The Attorney General responded that the juvenile court lacked authority to convert the unpaid victim restitution into a civil judgment at the conclusion of the probation period; thus, she concedes the case must be remanded to the juvenile court with directions to, in the alternative, (1) dismiss the petition and the restitution order, (2) extend the minor's probation for up to six months during which time he could make further restitution payments, or (3) conduct a jurisdictional hearing on the petition.

In his reply brief, the minor agrees that the conversion of the restitution order to a civil judgment was error. He argues alternative (3) would impermissibly punish him for his inability to pay the outstanding restitution; and, if alternative (2) is chosen, his parents are entitled to a hearing on their ability to pay. We shall remand for further proceedings.

"Section 654.2 provides in relevant part: 'If a petition has been filed by the prosecuting attorney to declare a minor a

ward of the court under Section 602, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of supervision as set forth in Section 654. . . . If the minor successfully completes the program of supervision, the court shall order the petition be dismissed.'

"While a section 654.2 informal supervision program is available postpetition, it is to be implemented before adjudication of the charges alleged in the petition.

[Citations.] "In fact the purpose of the section 654 informal supervision program is to avoid a true finding on criminal culpability which would result in a criminal record for the minor. . . . [¶] . . . The court cannot make true findings on allegations in the petition and then order an informal supervision program under section 654.2; the findings and the order are inherently inconsistent. . . ." (In re Omar R. (2003) 105 Cal.App.4th 1434, 1437-1438.)

This same inconsistency invalidates the juvenile court's order converting the victim restitution into a civil judgment. Section 730.6, subdivision (a), on which the court relied, provides in relevant part: "Upon a minor being found to be a person described in Section 602, the court shall . . . order the minor to pay, in addition to any other penalty provided or imposed under the law, . . . [¶] . . . [¶] [r]estitution to the

victim or victims, if any, in accordance with subdivision (h).”
(§ 730.6, subd. (a)(2)(B), italics added.)

Subdivision (r) of Welfare and Institution Code section 730.6 adds that, “[i]f the judgment is for . . . a restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a), the judgment may be enforced in the manner provided in Section 1214 of the Penal Code.” The Penal Code, in turn, provides that an “order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment.” (Pen. Code, § 1214, subd. (b).)

Because section 730.6 operates only “[u]pon a minor being found to be a person described in Section 602” (§ 730.6, subd. (a)(2)) and no such finding was—or could have been—made before the minor was placed on informal probation (*In re Omar R.*, *supra*, 105 Cal.App.4th at pp. 1437-1438), the juvenile court was not authorized to convert the \$25,874 restitution order into a civil judgment. The conversion must be reversed, even though the minor did not object on this ground in the juvenile court. (*People v. Scott* (1994) 9 Cal.4th 331, 354.)

Our reversal of the order converting the minor's restitution to a civil judgment also requires reversal of the juvenile court's finding that the minor had *successfully completed* his informal probation as well as the court's ensuing orders terminating probation and dismissing the petition.

Payment of restitution was a condition of the minor's probation. However, before probation was terminated, the minor had not made restitution for any portion of the \$25,874 incurred by the medical insurer and had made restitution only for the victim's \$100 copay. Thus, the finding that probation had been "successfully completed" appears to have rested, in part, upon the court's expectation that the minor would make further payments to satisfy the civil judgment. Apart from this expectation by the court, the record contains no support for a finding that probation had been successfully completed.

"Section 654.2, subdivision (a) provides for a six-month period of informal probation during which the minor is to fulfill conditions set by the court. *If the minor has not fulfilled the conditions by the end of the six-month period the court may extend the period of informal probation for the minor to do so.*" (*In re C.W.* (2007) 153 Cal.App.4th 468, 472-473, italics added.)

The minor acknowledges that, on remand, the juvenile court will have discretion to extend his probation. (*In re C.W.*, *supra*, 153 Cal.App.4th at pp. 472-473.) The remand will allow the minor's parents an opportunity to request a hearing on their

inability to pay restitution pursuant to section 730.7.² It is not necessary to consider the minor's contention that he has standing on appeal to assert violations of his parents' statutory rights.

This leaves the Attorney General's suggestion that, on remand, the juvenile court will have the option of conducting a jurisdictional hearing on the petition. The minor claims this option is not available, because proceeding to a jurisdictional hearing simply because he (or his parent) lacks the ability to pay ordered restitution would be an abuse of discretion.

(*Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 749.)

Because the matter must be remanded, the juvenile court will have an opportunity to consider the issue of the minor's, and his parents', inability to pay. If the court finds an

² Welfare and Institutions Code section 730.7 provides in relevant part: "In a case in which a minor is ordered to make restitution to the victim or victims, . . . a parent . . . who has joint or sole legal and physical custody and control of the minor shall be rebuttably presumed to be jointly and severally liable with the minor in accordance with Sections 1714.1 and 1714.3 of the Civil Code for the amount of restitution, fines, and penalty assessments so ordered, up to the limits provided in those sections, *subject to the court's consideration of the parent's . . . inability to pay.* When considering the parent's . . . inability to pay, the court may consider future earning capacity, present income, the number of persons dependent on that income, and the necessary obligations of the family, including, but not limited to, rent or mortgage payments, food, children's school tuition, children's clothing, medical bills, and health insurance. The parent . . . shall have the burden of showing an inability to pay." (§ 730.7, subd. (a), italics added.)

ability to pay, the minor's contention will be moot and proceeding to a jurisdictional hearing will not be an abuse of discretion. Conversely, if the court finds no ability to pay, a jurisdictional hearing will be an abuse of discretion for the reasons stated in *Charles S. v. Superior Court, supra*, 32 Cal.3d at page 749.

DISPOSITION

The finding that the minor successfully completed his probation, and the orders terminating probation, dismissing the juvenile petition, and converting the balance of the restitution to a civil judgment, are reversed. The matter is remanded to the juvenile court for further proceedings consistent with this opinion.

_____, BUTZ, Acting P. J.

We concur:

_____, MURRAY, J.

_____, DUARTE, J.